UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

S.W., by her parent and natural guardian, J.W., individually and on behalf of all others similarly situated; **A.W.,** by her parent and natural guardian A.W.; **B.F.,** by his parent and natural guardian, P.F., individually and on behalf of all others similarly individually and on behalf of all others similarly situated; **J.F.** and **P. F.**, by their parent and natural guardian, A.F., individually and on behalf of all others similarly situated; **L.T.,** by her parent and natural guardian, R.T., individually and on behalf of all others similarly situated,

Plaintiffs,

vs.

SHEILA WARREN, sued individually, and as Director of Early Intervention Services for Orange County, ORANGE COUNTY DEPARTMENT OF HEALTH, COUNTY OF ORANGE,

Defendants.

Civ. Action No. 07 CIV 5708 (WCC)

AFFIDAVIT

STATE OF NEW YORK)
) ss:
COUNTY OF ORANGE)

MICHELE THOMPSON, being duly sworn, deposes and says:

1. I am the mother and natural guardian of L.T., one of the Plaintiffs in the within action.

2. My daughter was initially evaluated for Early Intervention services in August 2006. She began receiving speech therapy 2x per week in September 2006. In October 2006, because of her non-compliance during speech, the speech therapist recommended that my daughter receive an occupational therapy evaluation for sensory issues.

3. An OT evaluation was completed in October 2006. Although the O.T. evaluator noted in her evaluation that my daughter was exhibiting symptoms consistent with a diagnosis of autism, such as, toe-walking, not responding to her name, lack of consistent eye contact, and other symptoms, Early Intervention officials failed to recommend that my daughter receive a neurological or an evaluation by any other professional qualified to diagnosis autism. Instead, it was recommended that my daughter receive O.T. 2x per week due to fine motor delay and for a sensory processing disorder. A copy of the O.T. evaluation is attached as Exhibit "1".

4. The O.T. sessions began in November 2006. My daughter continued to be non-compliant and the therapist stated that the issues with my daughter, such as her crying, were more than sensory issues, but were social-emotional issues and out of her realm of expertise. She told me that my daughter's crying and tantrums were the worst that she had ever seen with any child she had worked with. She called our ongoing service coordinator, Donna Santiago, to see what she could do to get us more help.

5. Ms. Santiago agreed to assign us a social worker who was supposed to help us with our daughter's behaviors and also was assigned to a parent-child play group on Saturdays to "give her structure". These services were to commence the end of December 2006.

6. Before these services were to commence, I placed a query on a parent website of which I am a member asking whether anyone knew what "play therapy" was all about. On December 5, 2006, a mother replied that, based on the information I had provided about my daughter's behaviors and deficits, I should get my daughter's O.T. increased and take her to a developmental specialist. I sent her a thank you email and received a

second email from the mother confiding that she had a son that was autistic and it seemed like my daughter was exhibiting behaviors consistent with that diagnosis. My husband and I stayed up all night, on the computer, reading information about autism. We recognized our daughter in what we read. It was a heart-wrenching realization.

7. The following morning, I called our ongoing service coordinator. I asked her whether it was true that if any of the therapists or she suspected that my daughter had autism, they were not permitted to tell me. She admitted that this was true. She said that perhaps in after 8 months, my daughter wasn't making progress, one of the therapists would probably tell me "off the record" that I should take her to a doctor for an evaluation. She stated that she had previously questioned me about what my doctor thought. She stated her reason for doing so was to "hint" to me that something more needed to be done.

8. Immediately made an appointment for my daughter with a pediatric neurologist for December 26, 2006. The doctor ruled out other disorders; he stated he did not diagnose autism, but stated that he believed our daughter would benefit from ABA, and then referred us to another specialist who could diagnose autism.

9. On January 18, 2007, we took our daughter to Dr. Erica M. Loutsch, at New York Medical College. She immediately diagnosed our daughter with autistic spectrum disorder, and stated in her report that the present services she was receiving through Early Intervention were "inadequate and insufficient". She recommended that speech be increased to 3x per week; that ABA therapy be provided for 20 hrs. per week, and that my daughter participate in a toddler developmental class 3 days per week. A copy of Dr. Loutsch's report is attached as Exhibit "2".

10. I presented this report to the IEP team at our 6 month review on January 30, 2007. Our initial coordinator from Orange County, Lori Muniz, attended. Team members recommended that speech be increased to 3x per week. There was no discussion regarding the ABA therapy other than Ms. Muniz stating that she would only approve 10 hours per week, not the 20 hours that our daughter's doctor prescribed, and that we should "start slow" with 6 hours per week as a starting point. At that time, no one informed us, as parents, that we had the right to choose the provider we wanted. We deferred to them because we trusted them as the experts whose only concern - we naively, and wrongly, believed at that time - was the well being and development of our daughter. At the time our daughter aged out of EI program, she was only receiving 16 hours a week of ABA. When I requested an increase, our ongoing service coordinator, Donna Santiago, made me feel intimated that I was asking for my daughter to receive more services. I told Ms. Santiago that our daughter's developmental pediatrician had told us that our daughter should be receiving the 20 hours that had already been prescribed by our daughter's neurologist. . She said "How are we going to justify this to the County?" Ultimately, because of Ms. Santiago's strong posturing, I backed down and agreed to only request 16 hours with the increase to be used in the community. Ms. Santiago said that the County would probably approve that.

11. At one point, when I expressed my disappointment with the difficulty in obtaining services my daughter plainly required, a service coordinator told me that she only knows of one family that the County approved for more than 10 hours of ABA, and in that case it was because the parents harrassed the County.

12. Because of lack of providers and other issues with Accent on Ability, the agency who was providing ABA therapists for our daughter, in April 2007, we decided to change to Thera-Care.

13. On August 31, 2007, our daughter "aged-out" of the EI program. Thera-Care informed me that our daughter's "owed hours" were approximately 60 hours of ABA therapy, and was owed speech therapy which she still has not received.

14. On August 31, 2007, my daughter transitioned into the preschool program. At the first meeting, our daughter was approved for 21 hours SEIT, 5 of which will be used in the typical preschool she is attending, and 16 hours at home. In addition, she has been approved for speech therapy 5x week and OT 3x week.

15. Since August 28, 2007, our daughter has received no speech therapy whatsoever. I was told by the a member of the school staff that there are no providers available, and that none have been available since July 2007.

16. In August 2007, I asked our daughter's speech therapist, Jennifer Wallingford, whether she would be able to continue providing speech therapy to our daughter. She told me that she wanted to work part time, but did not believe she would be able to because Sheila Warren refused to allow providers to have a contract with the County unless they agreed to maintain a caseload of five, and Jennifer felt she would not be able to handle that by herself. Jennifer also told me that Orange County paid less to therapists providing services to preschool children than it did to therapists working in the

EI program. Both our social worker, Jennifer Grismer, and our service coordinator, Donna Santiago, confirmed that this was true.

Michele Thompson

Sworn to before me this
11th day of September, 2007.

MARY J. WHATELEY
Notary Public, State of New York
No. 4918265 Westchester
Qualified in Orange County
Commission Expires ~~May 31, 19~~ 9/14/07

Lily Thompson

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OCCUPATIONAL THERAPY EVALUATION

CHILD: Lily Thompson
D.O.B: 7/16/04
EVALUATOR: Jamie Serra OTR, CHT
D.O.R: 10/13/06

BACKGROUND: Lily is a 27-month-old little girl referred for an Occupational Therapy evaluation because of fine motor and sensory processing concerns. Lily's mother was present during the evaluation, and served as a historian. The evaluation took place in the living room of the family's home. Mom was specifically concerned that Lily is "anti social". Mother reports that Lily attends playgroups and family gatherings, but she separates from everyone else and she requires a lot of "space". Currently, Lily is receiving Speech Therapy services through Orange County Department of Health, Early Intervention Division at her home 2 times weekly. Mother reports that both the birth and health history are insignificant, and Lily is described as a healthy child. Lily's behavior during the evaluation was reported to be typical for her.

BEHAVIOR: Upon arrival, Lily acknowledged the evaluator, but maintained her distance for several minutes. Lily became a little whiney shortly into the interview portion of the evaluation, and her mother put music on which seemed to help calm Lily. When Lily eventually came over to the evaluator, she approached from behind and was very guarded. Lily participated in most tasks of the evaluation, but had difficulty attending to visual and verbal demonstrations of a task. Lily attempted to mouth many of the evaluation items, and was often distracted from participating because of her need to mouth the toys. When Lily was told "no", she became very whiney and began to cry. Lily became distressed with therapeutic handling and hand over hand instruction during the evaluation.

TESTS ADMINISTERED:
PDMS II
Sensory History
Clinical Observation

SENSORY FUNCTIONING: *The sensory systems give the body information about itself and the world.*

The vestibular system provides information through the inner ear regarding body and head position in relationship to gravity. This system helps with balance and allowing one to be comfortable in many different postures. When the system is hyperactive the child may dislike playground equipment such as swings and slides. When it is under- active, the child may seek out activities such as spinning and jumping. In either case, the child may not be sure how he/she will react to the environment, and may have difficulty interacting with things in the environment.

The proprioceptive (or kinesthesia) system provides information about movement and position of the limbs or body. When this system doesn't function well, it is difficult to determine where the body or limbs are in space, which makes it hard to plan how to move (praxis). This may be the cause of clumsiness, inability to follow directions or poor balance.

The tactile system provides information through the skin regarding touch localization, direction of touch, such as drawing on the back, and sensitivity or aversion to touch, which is referred to as tactile defensiveness. When this condition is present, the child may be overwhelmed by aversive tactile input, such as another child's touch, uncomfortable clothing or using glue, play dough or finger-paint. These sensations are so overwhelming; the child may be unable to concentrate on other aspects of the learning environment.

The auditory system gives information about the sounds around us. If the system is hypersensitive, the individual will have difficulty tolerating particular sounds. This may result in a child who cannot concentrate in a noisy setting.

Lily Thompson

The visual system gives information about the characteristics of what we see. If the system is hypersensitive, the individual may prefer environments that have a limited number of objects, dimly lit areas of subdued colors. If the system is hyposensitive, the individual may seek out bright lights, fast moving toys or may examine objects very closely.

The olfactory and gustatory systems give us information about smell and taste. If the system is hypersensitive, the individual may have difficulty tolerating smells, certain foods and textures.

SENSORY RESPONSES:

1. Vestibular- Mother reports Lily to be a child who is "always moving". Lily enjoys the slides and swings on a playground. Mother reports that Lily likes to rough house, and does not mind being turned upside down, or when her head is brought out of midline. Mother reports that Lily has difficulty sitting through a family meal, and sitting through age appropriate activities. From reports and observations, Lily appears to have a hypo reactive vestibular system, and she seeks excessive movement experiences to meet her needs.

2. Proprioceptive - Mother reports that Lily manipulates in familiar environments without difficulty. Lily tends to seek out activities that provide her with more feedback into her joints. Activities that she enjoys the most include jumping, climbing, and bouncing. Mother reports that Lily has a particular chair that she bounces very hard in. Lily was observed to walk on her toes during the evaluation, and her mother reports that she often stuffs her mouth, especially when eating softer foods. The above behaviors are often present in children who are not processing proprioceiptive input. Lily may not be experiencing the same feedback through her joints (where the proprioceptors are located), and therefore she is more comfortable with higher intensity input.

3. Tactile- Mother reports that for the longest time, Lily was not affectionate at all, and although she will tolerate hugs and kisses, they need to be on her terms. Mother reports that when Lily approaches people for affection, she often approaches from behind them. Lily shows distress with therapeutic handling, and does not like hand over hand assistance during a task and will withdraw her hand. Lily does not mind being dirty, but she does not like being washed. Mother reports that Lily enjoys her bath until it is time to get washed. Lily does not like her face, hair, or hands washed. Lily will not allow her mother to brush her teeth, and screams through getting her hair brushed. Mother reports that Lily will not let her younger brother touch her. Lily was observed to maintain a personal space around her, and although she will come into your space, she doesn't like when her space is invaded. Lily presents with behaviors often present in children who are tactile and sensory defensive.

4. Auditory- Mother feels that most often, Lily does not respond to her name when she is called. Mother reports that Lily becomes very overwhelmed and sometimes upset in loud and busy environments, and at times she will see Lily cover her ears. Lily is reported to calm to music if she is upset, possibly benefiting from the external rhythm and soothing nature of children's music. Lily appears to have difficulty processing auditory input, and difficulty sorting out the relevant from non relevant noises around her

5. Visual - Lily established consistent eye contact with the therapist and with objects during the evaluation. Lily was able to track objects in vertical and horizontal fields. Dissociation of her eyes from her head (moving her eyes to track, while keeping her head still) is emerging. Lily was observed to become distracted visually by her environment, and mother reports this is consistent with what she sees as well.

6. Olfactory/Gustatory - Oral overflow was not observed during the evaluation in terms of drooling or open mouth postures. Lily attempted to put many of the evaluation items in her mouth. Mother reports Lily often mouths non food items and that this is a concern of hers. Lily is a picky eater, especially in regards to texture, and prefers foods that are dry and crunchy.

NEUROMUSCULAR STATUS:

1. Muscle Tone -- (degree of tension normally present when muscles are in a resting state). Lily presents with normal tone. Lily presents with poor proximal stability and endurance. Lily was not able to maintain a upper body weight bearing position or wheel barrel walk. Lily also became very distressed with the therapeutic handling. Good proximal stability is important because the muscles of the upper trunk support the diaphragm and assist with phonation, they are also important for fine motor skills. This was demonstrated and described to mother.

2. Range of Motion- Within normal limits.

3. Bilateral Hand Skills- Lily was able to perform tasks that required both hands to perform the same motion like pulling on a string or removing the top off of a marker. Lily had difficulty with activities that required her hands to perform two separate movements. Lily was not able to open a bottle with a twist top, or put a larger bead on a string.

4. Midline Integration - It was observed that Lily will use either hand to pick up a marker or block, depending on which side of midline it is presented. Lily was able to cross her midline with facilitation

Lily Thompson

UPPER EXTREMITY STATUS:

Results of the PDMS II, Fine Motor Subtest, revealed an age equivalent of 14 months for grasping (7th%ile, SS-7) and 20 months for visual motor integration (5th %ile, SS-5). These delays are felt to be partially the result of sensory processing deficits that can effect the acquisition of new skill development for fine motor skills and visual motor skills.

1. Prehension patterns- Lily is able to pick up smaller objects using 2 and 3 point grasp pattern (using her thumb with her second and third fingers). When using these grasp patterns, Lily tends to keep her ring and pinky fingers straight, compromising control and in hand manipulation skills. Lily was observed to use whole arm movements when performing fine motor tasks, with movement directed from the shoulder instead of the wrist and hand, which would provide her with more control. Although controlled release of objects is emerging, Lily has difficulty in this area, and required repeated trials to tower 7 one inch blocks as she often uses the surface to assist with release of objects. Lily holds a marker with a cylindrical or overhand grasp, and does not like to be corrected with her grasp.

2. Pre-writing Skills – Lily holds a crayon or marker with an immature grasp pattern. A hand preference was not noted during the evaluation. Lily was able to imitate scribbling for the evaluator, but not able to imitate a vertical line.

3. Visual Discrimination – Lily is able to place 3/3 pieces in form board puzzle.

SELF CARE SKILLS:

1.Dressing – Lily is able to remove her shoes independently. Mother reports that Lily is not very interested in dressing and prefers to have it done for her. Lily is dependent for all other components of dressing

2.Eating –Lily is independent with eating finger foods, and is also independent with a fork and a spoon. Lily can drink from a sippy cup and is independent with a straw. Mother reports that Lily is beginning to work on using a regular cup.

3. Self Regulation- Lily is reported to sleep through the night, and take daily PM naps. Mother reports that Lily has a nightly routine that includes having a bottle to fall asleep. Mother reports that Lily has a lot of difficulty attending to an age appropriate tasks until their completion because she cannot sit still. Lily becomes distressed easily if she is not directing her play. Mother reports that Lily cries vs. having a tantrum, and the crying can last up to an hour.

SUMMARY:

Lily is a 27-month-old little girl who presents with an overall 33% delay in the physical domain. Lily further presents with sensory defensive behaviors and proprioceptive, vestibular, auditory, and visual processing difficulties. Overall, Lily's ability to perform everyday tasks and to participate in family activities is directly effected by her ability to process the sensory information she is receiving. This is demonstrated in the results of the PDMS II for fine motor skills. Lily qualifies for early intervention services based on a 33% delay in the physical domain. Upon completion of the evaluation, the results were discussed with her mother.

Suggested activities for the family:

1. Try working on fine motor skills like coloring after 15 – 20 minutes of gross motor or hard play. This can help with attention to task.
2. Provide opportunities for Lily to use both hands together in a coordinated way (bilateral skills) like stringing beads, rolling out playdough, or playing with lacing cards (again these activities should be attempted after heavy physical play to help with focus).
3. Provide opportunities for Lily to cross her midline during floor and table play as demonstrated to mother.
4. Read or play with puzzles with Lily over your lap (belly down), as demonstrated, to work on upper body strength.

Recommended references for the parents/caretakers: (as requested)

Sensory Secrets, by Catherine Chemin Schnieder, O.T.R.
The Out of Sync Child, by Carol Kranowitz
Sacred Earth Drums, by David and Steve Gordon

Jamie Serra OTR, CHT Lic. #004003
Registered Occupational Therapist
Certified Hand Therapist

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PSYCHIATRIC EVALUATION

Thompson, Lily
D.O.B.: 7/16/04
D.O.E.: 1/18/07

Presenting Problem:
Lily is a 2 ½ year old girl who was referred for evaluation by her neurologist, Dr. Stanley Rothman due to developmental delays in speech and social interactions.

Past History:
Lily is the first child of her parents union. She has a brother 14 months old. Pregnancy was normal. Labor was induced. Her A.P.G.A.R. score was 9. Delivered by Cesarean section.

Soon after birth parents noticed difficulty with breast feeding and lack of cuddling. Speech was delayed as well as fine motor coordination. She walked at 14 months.

Medical History:
No medical difficulties.

Family History:
Paternal uncle has a history of social isolation in adulthood. No other pertinent family history. Younger brother is developing normally.

Mental status:
2 ½ year old girl neatly dressed, well groomed, and appears stated age. Upon entry into the examining room she proceeds directly to explore several objects, without acknowledging the examiner. When spoken to she does not answer or make eye contact. She repeatedly plays with several objects and makes no effort to engage her parents or her younger brother in play.

Mother reports that she ignores her peers in nursery school or on play dates, that she has difficulty making transitions and has frequent temper tantrums. She does not like to be touched and has some repetitive behaviors.

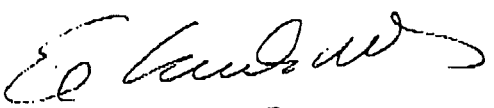
Diagnostic Impression:
Autistic disorder, DSM IV 299.0

Recommendation:
The current services being provided are inadequate and insufficient, e.g. O.T. twice a week, speech therapy twice a week for 45 minutes each session and developmental class once a week

The recommended services are:

1.) continue speech therapy but increase to three times a week
2.) applied behavioral analysis 20 hours weekly
3.) toddler developmental class three days a week

Lily appears to be of at least normal intelligence; therefore, the prompt implementation of the above plan will increase her chances of becoming mainstreamed by kindergarten.



Erica Loutsch, M.D.

cc: Stanley Rothman, M.D.